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MODERN POLITICAL TRIALS
(LAW 342H1S/HIS 1271)

Volume 1

Professor Michael R. Marrus

Winter 2009

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MODERN POLITICAL TRIALS
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UNIVERSITY OF TORONTO
Faculty of Law/Department of History

LAW 342H1S/HIS 1271
Modern Political Trials
Winter Term, 2009

Falconer Hall, Room 1 (FA 1)
84 Queen's Park

Thursdays: 10:30 a.m. to 12:20 p.m.

What are political trials? According to one recent definition, these are trials in which the outcome "depends on an evaluation of the defendant's political attitudes and activities." Among other things, this seminar course will test that definition, and begins with the hypothesis that there can be other sorts of political trials, in which courtroom arguments speak to issues of political importance in different societies. Many different circumstances, it should be come clear, can contribute to making trials political. To examine these propositions, we will look at European, North American and Israeli trials in the nineteenth and twentieth centuries. The approach will be interdisciplinary, and will draw upon legal, political, historical and social analyses of the various trials selected for the course.

This year's topics, together with the trials that highlight them, will be:

- Politics and Madness: Daniel McNaughtan and the Insanity Defense, 1843
- Treason: The Queen v. Louis Riel, 1885
- Homosexuality: The Trials of Oscar Wilde, 1895
- Terrorism: Dealing with the Assassinations of Simon Petlura, 1927 and King Alexander of Yugoslavia, 1934
- Show Trial: The Case of the Anti-Soviet Bloc of Rights and Trotskyites, 1938
- International Criminal Law: The Trial of the Major German War Criminals at Nuremberg, 1945-46
- Holocaust: The Attorney General of Israel v. Adolf Eichmann, 1962
- Atrocity: My Lai and the Trial of Lieutenant William Calley, 1970
- Crimes against Humanity: Touvier-Barbie-Papon, 1964-99
- Law and History: Irving v. Penguin, Limited & Deborah Lipstadt, 2000
- Transitional Justice: Saddam in Baghdad, 2006

Students should purchase the case book for this course, available in the Faculty of Law Bookstore:

Modern Political Trials: LAW 342H1S/HIS 1271 **(Faculty of Law, 2008)**

Students may also wish to consult the remarkable Web site "Famous Trials," by Professor Douglas Linder of the University of Missouri-Kansas City School of Law, for a wealth of material on "famous trials":
http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm

Office Hours:

Tuesday and Friday, 9:00 to 10:00 a.m., or by appointment. My office is in Massey College, II-3. I can be most easily reached via email: michael.marrus@utoronto.ca or by telephone (416-946-0648).

Email:

While I will respond quickly to all appropriate email messages, these should be limited, for the most part, to communications regarding office appointments, specific reading assignments, etc. Questions that could be of interest to all students should be raised in class.

Course Requirements and Grade Distribution:

Essays: One short essay (1500 words) comparing two of the trials discussed in the course, due on **February 26**, and worth 15 percent; and one longer essay (7500 words), entitled "Reflections on Political Trials," drawing upon themes discussed in the course, due at noon on **April 30**, and worth 70 percent. *Please note: The deadline for the final submission of papers is fixed by the faculty and I cannot grant extensions beyond that point except in emergency situations and then through a university established process.*

Participation: 15 percent, based on attendance and class participation.

Academic Misconduct:

Students should know and understand the University's *Code of Behavior on Academic Matters*, particularly its sections dealing with plagiarism. For further information, please see http://www.utoronto.ca/govcncl/pap/policies/behaveac.html

SEMINAR	TOPIC AND ASSIGNED READING	
January 8	**Introduction**	
January 15	**Politics and Madness: Daniel McNaughtan and the Insanity Defense, 1843**	
	Richard Moran, *Knowing Right from Wrong: The Insanity Defense of Daniel McNaughtan* (New York: The Free Press, 1981), 1-6, 77-142.	1:1
	Supplementary:	
	Richard Moran, "The Modern Foundation for the Insanity Defense: The Cases of James Hadfield (1800) and Daniel McNaughtan (1843)," *Annals of the American Academy of Political and Social Science*, 477 (1985), 31-42.	1:39
	Joel Peter Eigen, "Lesion of the Will: Medical Resolve and Criminal Responsibility in Victorian Insanity Trials," *Law & Society Review*, 33 (1999), 425-59.	1:51
	Morris B. Hoffman and Stephen J. Morse, "The Insanity Defense Goes Back on Trial," *New York Times*, July 30, 2006.	1:87

January 22 **Treason: The Trial of Louis Riel, 1885**

Doug Linder, "The Trial of Louis Riel" (2004), *Famous Trials*, 1-6. http://www.law.umkc.edu/faculty/projects/ftrials/riel/rielaccount.html 1:89

Desmond Morton, ed., *The Queen v Louis Riel* (Toronto: University of Toronto Press, 1974), 2-7, 194-215, 239-68, 284-351, 371-2. 1:94

Supplementary:

Maggie Siggins, *Riel: A Life of Revolution* (Toronto: HarperCollins, 1994), 410-48. 1:160

Thomas Flanagan, *"Louis Riel: Insanity and Prophecy,"* in Howard Palmer, ed., *The Settlement of the West* (Calgary: Comprint, 1977), 15-36. 1:199

Thomas Flanagan and Neil Watson, "The Riel Trial Revisited: Criminal Procedure and Law in 1885," *Saskatchewan History*, XXXIV (1981), 527-73. 1:212

January 29 **Homosexuality: The Trials of Oscar Wilde, 1895**

Doug Linder, The Trials of Oscar Wilde," *Famous Trials*, 1-6. http://www.law.umkc.edu/faculty/projects/ftrials/wilde/wildeaccount.html 1:221

H. Montgomery Hyde, ed., *The Three Trials of Oscar Wilde* (New York: University Books, 1956), 105-339. 1:227

Supplementary:

Michael S. Foldy, *The Trials of Oscar Wilde: Deviance, Morality, and Late-Victorian Society* (New Haven: Yale University Press, 1997), 1-96. 1:350

February 5 **Terrorism: Dealing with the Assassinations of Simon Petlura, 1927 and King Alexander of Yugoslavia, 1934**

"Petlura Trial," *Time*, November 7, 1927. 1:399

Saul S. Friedman, *Pogromchik: The Assassination of Simon Petlura* (New York: Hart, 1976), 94-167, 306-43. 1:403

Film of the 1934 Assassination, Universal Studios, 3 min. 9 sec. http://www.youtube.com/watch?v=RfxL67Uqp6E&mode=related&search= 1:459

Ben Saul, "The Legal Response of the League of Nations to Terrorism," *Journal of International Criminal Justice*, 4 (2006), 78-102. 1:460

"Convention for the Prevention and Punishment of Terrorism, 19 League of Nations O.J. 23 (1938)," in M. Cherif Bassiouni, *International Terrorism: Multilateral Conventions (1937-2001)* (New York: Transnational Publishers, 2001), 71-8. 1:473

Supplementary:

David Engel, "Being Lawful in a Lawless World: The Trial of Scholem Schwartzbard and the defense of East European Jews," *Simon Dubnow Institute Year Book*, 5 (2006), 83-97. 1:482

February 12 **Show Trial: The Case of the Anti-Soviet Bloc of Rights and Trotskyites, 1938**

Robert C. Tucker, "Introduction: Stalin, Bukharin and History as Conspiracy," in Robert C. Tucker and Stephen F. Cohen, eds., *The Great Purge Trial* (New York: Grosset & Dunlap, 1965), ix-xviii. 1:489

Trial Transcript, Robert C. Tucker and Stephen F. Cohen, eds., *The Great Purge Trial* (New York: Grosset & Dunlap, 1965), 5-37, 514-60, 656-68, 681-9. 1:510

Supplementary:

Stephen F. Cohen, *Bukharin and the Bolshevik Revolution: A Political Biography, 1888-1938* (new edn., Oxford: Oxford University Press, 1980), 372-81. 1:562

February 19 **Reading Week**

February 26 **International Criminal Law: The Trial of the Major German War Criminals at Nuremberg, 1945-46**

Michael R. Marrus, *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (Boston: Bedford, 1997), 1-77. 2:1

International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945- 1 October 1946*, 42 vols. (Nuremberg: International Military Tribunal, 1947), II: 98-105, 153-4. (Robert H. Jackson, Opening Address for the United States). 2:40

Michael R. Marrus, *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (Boston: Bedford, 1997), 104-117, 180-3. (Hermann Göring Testimony and Cross-Examination by Robert H. Jackson). 2:46

International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945- 1 October 1946*, 42 vols. (Nuremberg: International Military Tribunal, 1947), I: 218-26, 247-57. (Judgement) 2:55

Supplementary:

Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 38-64. 2:66

March 5 **Holocaust: The Attorney General of Israel v. Adolf Eichmann, 1962**

"Judgment," State of Israel, Ministry of Justice, *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem*, 9 vols. (Jerusalem: Trust for the Publication of the Proceedings of the Eichmann Trial, 1994), V: 2082-4. 2:80

Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 97-182. 2:83

Supplementary:

Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor, Michigan: University of Michigan Press, 2004), 85-165. 2:127

Covey Oliver, "Judicial Decisions," *American Journal of International Law*, 56 (1962), 805-45. 2:168

March 12 **Atrocity: My Lai and the Court Martial of Lieutenant William Calley, 1970**

Doug Linder, "An Introduction to the My Lai Courts-Martial," Famous American Trials: the My Lai Courts Martial, 1970 http://www.law.umkc.edu/faculty/projects/ftrials/mylai/Myl_intro.html 2:191

Michal R. Belknap, *The Vietnam War on Trial: The My Lai Massacre and the Court Martial of Lieutenant Calley* (Lawrence, Kansas: University Press of Kansas Press, 2002), 98-190. 2:198

James S. Olson and Randy Roberts, *My Lai: A Brief History with Documents* (Boston: Bedford/St. Martin's, 1998), 174-99. 2:245

March 19 **Crimes against Humanity: Touvier-Barbie-Papon, 1964-99**

Henry Rousso, "Did the Purge Achieve its Goals?" in Richard J. Goslan, ed., *Memory, the Holocaust, and French Justice: The Bousquet and Touvier Affairs* (Hanover: University Press of New England, 1996), 100-4. 2:258

Vivian Grosswald Curran, "Politicizing the Crime Against Humanity: the French Example," *Notre Dame Law Review*, 78 (2003), 677-710. 2:261

Leila Sadat Wexler, "The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again," *Columbia Journal of Transnational Law*, 32 (1994-1995),

292-389. 2:289

Leila Nadya Sadat, "The Legal Legacy of Maurice Papon," in Richard J. Goslan, ed., *The Papon Affair: Memory and Justice on Trial* (New York: Routledge, 2000), 131-60. 2:335

Supplementary:

Guyora Binder, "Representing Nazism: Advocacy and Identity at the Trial of Klaus Barbie," *Yale Law Journal*, 98 (1989), 1321-39, 1355-72. 2:351

March 26 **Law and History: Irving v. Penguin, Limited & Deborah Lipstadt, 2000**

Richard Evans, "History, Memory, and the Law: The Historian as Expert Witness," *History and Theory*, 41 (October 2002), 326-45. 2:388

Richard J. Evans, *Lying about Hitler: History, Holocaust, and the David Irving Trial* (New York: Basic Books, 2001), 1-39. 2:398

Deborah E. Lipstadt, *History on Trial* (New York: Harper Collins, 1985), 77-108, 127-49, 185-209, 254-64. 2:418

Mr. Justice Charles Gray, Judgement, April 11, 2000, Sections XIII-XIV. http://www.nizkor.org/hweb/people/i/irving-david/judgment-00-00.html 4:467

April 2 **Transitional Justice: Saddam in Baghdad, 2006**

Mark Osiel, "Why Prosecute? Critics of Punishment for Mass Atrocity,"*Human Rights Quarterly*, 22 (2000), 118-47. 2:517

Michael P. Scharf, "The Iraqi High Tribunal: A Viable Experiment in International Justice? *Journal of International Criminal Justice*, 5 (2007), 258-63. 2:532

Miranda Sissons and Ari S. Bassin, "Was the Dujail Trial Fair? *Journal of International Criminal Justice*, 5 (2007), 272-86. 2:538

Sylvia de Bertodano, "Were There More Acceptable Alternatives to the Iraqi High Tribunal?" Journal of International Criminal Justice, 5 (2007), 294-300. 2:553

Nehal Bhuta, "Fatal Errors: The Trial and Appeal Judgments in the Dujail Case," *Journal of International Criminal Justice*, 6 (2008), 39-65. 2:560

Supplementary:

Nehal Bhuta, "Between Liberal Legal Didactics and Political Manichaeism: The Politics and Law of the Iraqi Special Tribunal," *Melbourne Journal of International Law*, 6 (2005), 245-71. 2:587

See the useful Web sites on the trial and on the Iraqi Special Tribunal:

Library of Congress Law Library:
http://www.loc.gov/law/public/saddam/saddam_webr.html

"Grotian Moment: The Saddam Hussein Trial Blog," Case Western Reserve University School of Law, International Law Center
http://www.law.case.edu/saddamtrial/content.asp?id=9